

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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JAMES D. FRAPPIER,

Plaintiff,

v.

MICHAEL J. ASTRUE,  
Commissioner of Social Security,

Defendant.

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ORDER

09-cv-0445-bbc

This is a civil action brought by plaintiff James Frappier to challenge a decision by the Commissioner of Social Security. On July 16, 2009, this court entered an order granting plaintiff's application for leave to proceed *in forma pauperis* and instructing plaintiff how to serve his summons and complaint on defendant. It is now November 2, 2009, and it appears that plaintiff still has not served defendant as required by Fed. R. Civ. P. 4(i)(2)(A).

In general, a party has 120 days in which to serve his complaint on the defendant. Fed. R. Civ. P. 4(m). Plaintiff's 120 days will expire on November 13, 2009. Under Rule 4(m), if a party fails to serve a defendant within 120 days after the complaint is filed, the court "must dismiss the action without prejudice against that defendant or order that service be made within a specified time." Although plaintiff has not asked for it, this court will give plaintiff some extra time in which to serve his complaint on defendant. Plaintiff must serve his complaint, as described in Rule 4(i)(2)(A), no later than November 20, 2009. If he fails to do so, this court is likely to dismiss his lawsuit. Although any such dismissal would be "without prejudice," in reality such a dismissal could spell the end of plaintiff's lawsuit because of the limitations period that applies to civil actions brought under 42 U.S.C. § 405(g). In other words, plaintiff needs to get his case moving--quickly--if he is serious about contesting the commissioner's decision denying his application for social security benefits.

ORDER

IT IS ORDERED that plaintiff James Frappier has until November 20, 2009, in which to serve his complaint on defendant. If he fails to do so, this court may dismiss his lawsuit for failure to prosecute.

Entered this 2nd day of November, 2009.

BY THE COURT:

/s/

STEPHEN L. CROCKER  
Magistrate Judge